

ORIGINAL

Pro Se 7 (Rev. 12/16) Complaint for Employment Discrimination

Per Pro Se

ICIT-CERT

UNITED STATES DISTRICT COURT

for the

District of

DALLAS

COUNTY

Division

Case No.

DC-20-17138

(to be filled in by the Clerk's Office)

Jury Trial: (check one)



Yes



No

C-68th

DeWitt C. Nkumba

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

GM Financial

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

DeWitt C. Nkumba

Street Address

613 Rainlily Drive

City and County

Desoto, Dallas County

State and Zip Code

Texas, 75115

Telephone Number

8176890894

E-mail Address

dnkumba@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name

GM FINANCIAL

Job or Title (if known)

Street Address	<u>801 Cherry Street, Suite 3900</u>
City and County	<u>Fort Worth, Tarrant</u>
State and Zip Code	<u>Texas, 76102</u>
Telephone Number	<u>817 302 7000</u>
E-mail Address (if known)	<u></u>

Defendant No. 2

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

Defendant No. 3

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

Defendant No. 4

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

**C. Place of Employment**

The address at which I sought employment or was employed by the defendant(s) is

Name	<u>GM FINANCIAL</u>
Street Address	<u>3801 S. Collins Street</u>
City and County	<u>Arlington, Tarrant</u>
State and Zip Code	<u>Texas, 76014</u>
Telephone Number	<u>8179830860</u>

**II. Basis for Jurisdiction**

This action is brought for discrimination in employment pursuant to (check all that apply):

Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

*(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)*

☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

*(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)*

☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

*(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)*

☐ Other federal law *(specify the federal law):*

☐ Relevant state law *(specify, if known):*

☐ Relevant city or county law *(specify, if known):*

### III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☒ Failure to promote me.
- ☐ Failure to accommodate my disability.
- ☒ Unequal terms and conditions of my employment.
- ☒ Retaliation.
- ☐ Other acts *(specify)*: Defamation of Character and wrongful termination (constructive discharge).



*(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)*

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)  
alleged discrimination reached its climax from June, 2019 through December, 2019.

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C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.  
☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☒ race \_\_\_\_\_  
☒ color \_\_\_\_\_  
☐ gender/sex \_\_\_\_\_  
☐ religion \_\_\_\_\_  
☒ national origin \_\_\_\_\_  
☒ age (year of birth) 1971 *(only when asserting a claim of age discrimination.)*  
☐ disability or perceived disability *(specify disability)* \_\_\_\_\_
- 

E. The facts of my case are as follows. Attach additional pages if needed.

I reported my concerns to the Human Resources in good faith. My complaint was met with silence and narrative was changed. I was called a Fucking Nigger by one of GM Financial Finance Manager. I gave my Manager details of the incident, she did not report the issue to Management until October

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*(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)*

#### IV. Exhaustion of Federal Administrative Remedies

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on (date)

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B. The Equal Employment Opportunity Commission *(check one)*:

- ☐ has not issued a Notice of Right to Sue letter.  
☒ issued a Notice of Right to Sue letter, which I received on (date) 8/26/2020.

*(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)*

C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

- ☐ 60 days or more have elapsed.  
☐ less than 60 days have elapsed.

**V. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

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**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

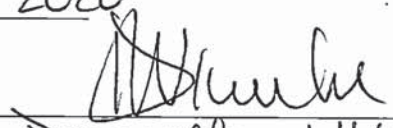
Date of signing: \_\_\_\_\_

Signature of Plaintiff \_\_\_\_\_

Printed Name of Plaintiff \_\_\_\_\_

**B. For Attorneys**

Date of signing: 11/18/2020

Signature of Attorney 

Printed Name of Attorney Deneet Nkumba

Bar Number \_\_\_\_\_

Name of Law Firm \_\_\_\_\_

Street Address 613 RAINLILY DR

State and Zip Code Desoto, TX 75115

Telephone Number 817 689 0894

E-mail Address dnkumba@gmail.com

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DEWITT NKUMBA, and files his Original Petition, complaining of GM FINANCIAL, and who would show unto the Court as follows:

#### I. DISCOVERY CONTROL PLAN

1.1 Discovery, in this case, is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Suit Procedure:

#### II. PARTIES

2.1 Plaintiff is DeWitt Nkumba, 613 Rain Lily Drive, DeSoto, Texas 75115 and may be served with process at that address or wherever he may be found.



2.2 Texas Corporate Defendant: Marci Mancuso SVP, Associate Counsel, GM Financial, 801 Cherry Street, Suite 3900, Fort Worth, TX 76102 and maybe serves with the process at that address or wherever they may be found.

### III. VENUE

1. This suit is brought in accordance with the laws of the State of Texas, for the recovery of damages which are within the jurisdictional limits of this Court, to which DeWitt is entitled to receive compensation for the federal employment violations described below. The court has continuing jurisdiction over GM Financial because GM Financial committed a tort in whole or in part in the state of Texas. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, DeWitt states that damages and losses are within the jurisdictional limits of this Court. Furthermore, as required by rule 47(b), Texas Rules of Civil Procedure, DeWitt states that the damages, harm, and losses sought by DeWitt are in an amount within the jurisdictional limits of this Court. DeWitt is required by Rule 479C) of the Texas Rules of Civil procedure to state the amount of the damages, in dollar amount, that represents DeWitt's harms and losses suffered due to the negligence of GM Financial. The legislative history of this requirement indicates that it is for the record keeping and statistical purposes only for lawsuits filed in the State of Texas.

At this time, no discovery has been conducted and DeWitt's assertion is made upon knowledge and belief at the time of filing and reserves the right to amend as more information and discovery becomes available. DeWitt seeks monetary relief over \$975,000.00 but no more than \$2,500,000.00. The amount of monetary relief actually assessed by jury or judge, however, will ultimately be determined by a jury or judge after hearing all of the evidence of harms, damages, and losses. DeWitt implicitly trusts the judgment of the good and fair judge or jury as the representatives of our community. Ultimately, DeWitt will ask a judge or jury to assess a fair and reasonable amount of money damages as compensation for DeWitt's losses.



#### IV. FACTUAL BACKGROUND

this lawsuit results from a place of employment at GM Financial from July 2019- June 2020. I experienced racial slur, harassment, retaliation, discrimination, defamation, intimidation, constructive discharge (wrongful termination), and wage inequality. The related incidents were reported to Management and Human Resources in good faith. Much to my surprise, there was little to not much action at all. The narrative was being changed at the Human Resources level following my reporting, the Human Resources became part of the problem after I noticed Human Resources was taking sides and implying the issues I brought forward, were contradicting(per my February 25, 2020 phone conversation with Stephanie Carroll, Human Resources Generalist). I also found out that Human Resources would tell me the issue has been investigated when in fact, the investigation did not take place in its entirety. The length of time (from July- January), it took to address my concerns, including my attempts to follow up on the racial slur issues, is troubling. It simply means GM Financial did not care. If GM Financial cared and made my work environment safe, maybe I would have been working for GM Financial today. Their inability to address the issues in a timely manner, means GM Financial was okay with the idea of dealing with name calling.

After I reported the incidents, Management stated I was underpaid and offered a letter with changes to my pay rate, mid-through the year. While I appreciated the gesture, the timing, and the Letter itself, remains questionable. I saw the Letter as a way of GM Financials' Management, as an attempt to buy my silence and to make me stop addressing and following up on the "N-word" issue, which left me devastated. I say this because nobody else on my team, but me, received this nature of Letter, which, by the way, was never signed. I asked how come I was receiving this pay rate notice. Human Resources told me that everybody has received the letter. To my knowledge, such kind of communication comes from Human Resources, not Senior Management. Could it be this was some form of bribery? This letter alone, is a sign I have been underpaid for all these years and was a way of changing the narrative. Suggesting all employees within the company received this letter on this particular day, is not true at all and I wondered why Management was going to such lengths. Nevertheless, the hostility had increased during the time I was employed at GM Financial, by day. The more I complained and/or addressed my concerns, the more I was subjected to further retaliation and to some degree, bullied by some of senior Management team. GM Financial treatment towards me was torture and intimidating. I found myself regretting raising concerns. I asked for Human Resources to go through these calls and/or ask Finance Managers or whoever was behind this cruel joke, to refrain from using racial slur towards me, each time I talk to them. It just seems like my request landed on deaf ears and GM Financial looked the other way. I did not see much action following my complaints. GM Financial made every intention to force me out of my position by retaliating, increase hostility and discriminated against me.

V. CAUSE OF CITATION

I have worked for GM Financial since November 2015. One of the biggest promises which kept me motivated to continue working at GM Financial was the very fact that GM Financial promotes and hires within. I was told when I first started that for the most part, my attendance, job performance and not being on any form of corrective action, what would be looked into before I can be considered for a promotion. I took the related statements to Heart and I was motivated. I have my annual review to show that I took my job seriously and wanted to excel my career. I wanted to move to high paying position than stuck on making \$12/hour. Life has its disappointment, and nothing was even disappointing when this Male Caucasian walked to me and mentioned in my face that if I were to smile in a dark room, all he could see are my Teeth. I found the remark reckless and disappointing; I reported the incident to Human Resources, and I moved on. However, that did not keep me from focusing on my growth with the company, considering I kept on getting promises I will soon move to my desired position.

I made several attempts applying for credit and strategic sales department because average salary was between \$47000 and \$55000 per year, respectively. Unfortunately, that opportunity never worked out for me. I applied for collectively 15 times. I never heard from recruiter but to get rejected email. I talked to the Human Resources. It was suggested I move to Funding position to get my Hands "dirty." The idea was to move to either Credit or strategic sales a year later. I moved from Loss Mitigation making \$15.99/ hour, to funding department where they started me at \$16.00 per hour. I got a penny raise. I was meeting my goals and I was productive in my new role. I saw this as my own opportunity to continue shining and get ready for my desired position. Promises about moving to Credit and/or Strategic sales were coming each month, as I was doing my monthly reviews. I had my hopes and expectations high. I was never shy to let anybody know that I will work at GM Financial to the day I retire. That's how high my confidence level was.

I had a not so pleasant experience on and around July 19, when Finance Manager from one of GM Financial Dealerships, called me a Fucking Nigger, fresh off Boat who does not know what the Fuck he is talking about. I reported the incident to my Manager. Unfortunately, nothing was done about the



incident. Another Finance Manager called and question if he was calling America and wondered if I was American. I reported the incident, nothing happened. I reached out to the Human Resources in December 2019. I did not have a chance to talk to somebody until end of January 2020. Human Resources argued with me that the related incidents took place in October, 2019 and not in July. I was not sure why the dates were being changed, but the fact of the matter is; this issue was never addressed.

During my meeting with Human Resources, we discussed much about lack of career advancement, racial slur issues was never addressed. I was devastated. We agreed to have a career path in place and there were plans to send me over to the credit department to meet credit hiring managers. Before I even made it to the credit department, my Manager sent an e-mail to the credit Manager. In this email, my Manager addressed that I was "slow". Something that she never brought to my attention. I found my Managers remark as a way to kill my dream and interfering my interview process to become a credit analyst and I never got hired. I asked my Manager what made her say this. She denied sending the email. I reported the issue to Human Resources, and I was promised this issue will be looked into. The person who told me of the unfortunate remark was interviewed by Human Resources. Much to her surprise, Human Resources never asked her, how she found about the remarks. Human Resources turned around and mentioned to me that, there was no evidence such remarks were made. I told Human Resources that I was aware they did the investigation but never addressed the related remark. There was nothing but silence from Human Resources, after I mentioned to them of my findings. This incident supports the very idea that Human Resources became part of the problem.

I've dealt with retaliation by being assigned some tasks I'm not fully trained in only to get a call on April 1, 2020, questioning why it is me forever to do my job.

Mr. Brent Wolf, one of the senior Manager used his position and power to intimidate, bullying and embarrass me in front of my teammates, by suggesting I graduated from High school not College, after I had told him I hold a college graduate. I told him I had interest in working in credit and strategic sales departments, he suggested I consider moving to collections/ customer service department instead, which would have been like going backwards. I found his remarks troubling and as his effort to keep me from advancing my career because of my nationality and skin color. It's not a coincident I've had to deal with this, all this was done on purpose and the goal was to force me out of GM Financial. It was a constructive discharge.

I received a call from HR Generalist. She called from her Cell phone on February 25, 2020. She heard I was out of office because I was stressed. She wanted to know if there was anything in particular which was stressing me. I told her that I was having hard times dealing with, what I considered a toxic, racist work environment. I mentioned to her that my other concern was incomplete Human Resources investigations have left me concerned. I asked Ms. Stephanie Carroll if I was treated like this because I was black. At that point, without answering my questions and issues, she told me cases have been closed and there was nothing for her to do. She started yelling at me and wanted to know why I was stressed. I found this phone conversation as a form of harassment. There was no solutions she had called me for, but to harass me. I told her that another HR Manager, had provided me with a list of physiologists in the area and how I was having problems scheduling for appointments. At that point she defamed me and told me that I keep contradicting myself and suggested I was lying.



I. GM Financial failed to root out racist work environment for Plaintiff by confronting these bad actors and asking them to stop with such behavior.

II. GM Financial made misleading information and mentioned to me that, they completed the investigation, when in actual sense the investigation was not completed in its entirety.

III. GM Financial defamed after calling me on a personal cell phone and stated the information I reported to Human Resources was contradicting and not true at all.

IV. GM Financial became part of the problem at all levels when the Human Resources seemed to protect people I had complained against in the investigation and not being forthcoming with the investigation.

V. GM Financial did a cover-up for the most part when they suggested my income was reviewed and they noticed I was not being paid enough. GM Financial mentioned everybody got the same letter. That's not true at all. This was an attempt to buy my silence and/or change the narrative.

VI. GM Financial wrongfully terminated me on purpose through "constructive discharge" by not resolving concerns which were brought forward, making working conditions unbearable.

VII. I reported racial slur which I was having to deal with. GM Financial did little or nothing to resolve nor condemn the behavior because doing so, would a bad economic decision because they would lose business if they confront the racist behavior.

VIII. GM Financial discriminated against me from applying for a high paying position because of my nationality and skin color.

IX. GM Financial did not offer the help I needed by providing feedback on this I need to do, in order to stand a chance to be interviewed.

X. GM Financial failed in complying with applicable official Federal and State Laws Regulations such as; U.S. Equal Employment Opportunity, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967.

#### VI DEMAND

6.1 Several attempts have been made to raise my concerns directly with Management, Senior Management, and Human Resources.

6.2 GM Financial has instead masked complaints, changed the narrative by suggesting that, I may be reading too much in the "N-word", GM was instead dismissive and implied they are not sure whether or not such an incident took place. I complained after being called a Nigger, GM Financial has instead remained silent and quietly retaliated. GM Financial decided to remain silent on my concerns, as their way to force me out of the Door (Constructive Discharge). If I had their interest, they would have at least made an effort to put racial slurs to a stop.

## VII DAMAGES



As a proximate result of GM Financials' negligence, I suffered a few setbacks in this whole thing:

i. I have invested a a lot of time at GM Financial which I will never recover over the 5 years I've worked for GM Financial and false promises I will be promoted only to see interns who are younger than me, filling out the very positions, I was interested in.

ii. Mental anguish which, in all reasonable probability will be suffered in the future.

iii. Related stress and anxiety has gotten worse in the past. I wasted time and not been able to make more to save more for my Kids College education.

#### VIII CONDITIONS PRECEDENT

Pursuant to Rule 54 of the Texas Rules of Civil Procedure, I hereby allege all conditions precedent have been performed and occurred.

#### IX ADDITIONAL RELIEF REQUESTED

In addition to its request for a temporary injunction, I request the Court to hold that:

10.1 GM Financial is guilty of Constructive discharge (wrongful termination) and I should be compensate \$150,000.00.

10.2 GM Financial violated Age discrimination and Equal Pay.by placing interns and people younger than, most of them not blacks, in a position to advance my career while I was being asked to apply for low positions with less pay. I'm calling for State and Federal prosecutor should assess a fine of \$25000 for each offense or the maximum fine the law requires. There is a need to mandate proper training to Management, Senior Management and Human Resources, when it comes to Equal pay and discrimination.

10.3 GM Financials' actions were done on purpose to hurt me, make me feel inferior, and left me at risk. GM Financial chose on purpose not to condemn their partners to assault me on purpose, while they treated me like another equipment. Confronting their business partners would have been a business risk. I have played a critical role by helping GM Financial earn their revenue. It is shocking they never condemn the behavior.

#### PRAYER

WHEREFORE, PREMISES CONSIDERED, I, DeWitt Nkumba, respectfully requests that Defendant, GM Financial, be cited to appear and the answer, and on final trial that I have a judgment against Defendant for:

- I. Actual damages;
- II. Prejudgment and post judgment interest as allowed by law;
- III. Costs of suit;

- IV. Exemplary damages, and
- V. Any further relief, either in law or equity, to which I justly entitle.